

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0135
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Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 3 DP 397714, 18 Inman Road CROMER NSW 2099 Lot 6 DP 201553, 18 Inman Road CROMER NSW 2099 Lot 7 DP 201553, 18 Inman Road CROMER NSW 2099 Lot 27 DP 28882, 69 Middleton Road CROMER NSW 2099 Lot 9 DP 201553, 6 Villiers Place CROMER NSW 2099 Lot 10 DP 201553, 7 Villiers Place CROMER NSW 2099 Lot 8 DP 201553, 4 Villiers Place CROMER NSW 2099
Proposed Development:	Construction of additional warehouse units to an approved Industrial Warehouse Development (DA2018/1300)
Zoning:	Warringah LEP2011 - Land zoned IN1 General Industrial Warringah LEP2011 - Land zoned IN1 General Industrial Warringah LEP2011 - Land zoned IN1 General Industrial Warringah LEP2011 - Land zoned IN1 General Industrial Warringah LEP2011 - Land zoned IN1 General Industrial Warringah LEP2011 - Land zoned IN1 General Industrial Warringah LEP2011 - Land zoned IN1 General Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Cromer Central Pty Ltd
Applicant:	Trend Living Pty Ltd

Application lodged:	15/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	06/03/2019 to 22/03/2019
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: 61.27%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 2,450,000.00
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EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application No. DA2019/0135 for the construction of additional warehouse units, an increase in the height of existing approved warehouse units and other minor works to an approved Industrial Warehouse Development located at Nos. 18 Inman Road, No. 69 Middleton Road and Nos. 4, 6 and 7 Villiers Place, Cromer.

The subject site is zoned IN1 General Industrial under the provisions of Warringah Local Environmental Plan 2011 and the proposed development is permissible with consent.

The public exhibition period generated seven (7) submissions, raising concerns around; height, traffic impacts and safety, noise and light pollution, trees, construction impacts and view loss. These matters have been addressed within the report, and some have warranted including them as reasons for refusal of the application.

The site has a long and complicated history. However, the relevant matters are that the previous development application (DA2018/1300) on the subject site also included the works which are the subject of this current application, in a very similar form to the current design. During the assessment of that application, the specific works were found to be problematic and the Applicant agreed to delete the works from the application. The applicant submitted amended plans for the balance of the proposed development and the application was subsequently approved by the Northern Beaches Local Planning Panel on 19 December 2018.

The proposed development exceeds the 11.0m height limit by up to 6.74m. The proposal is therefore reliant upon a variation under Clause 4.6 of WLEP 2011 to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 61.27%.

The applicant's written request to vary this standard has not satisfactorily addressed the matters required, and overall, the consent authority cannot be satisfied that the relevant matters of clause 4.6 of WLEP 2011 have been properly addressed and that the variation to the development standard is acceptable and worthy of support. This has formed a reason for refusal of the application.

The proposed development is an over-development of the site, it significantly exceeds the height of buildings standard, is not compatible with other buildings within the industrial zone, results in unacceptable impacts on surrounding residential properties and would set an undesirable precedent in the IN1 General Industrial zone.

As such, the proposal has been found to be inconsistent with the Aims of The Plan of the WLEP 2011, the objectives of the IN1 General Industrial zone, the provisions of Clause 4.6 of the WLEP 2011, the Objectives of the Warringah Development Control Plan 2011 and the provisions of clause D9 Building Bulk of the WDCP 2011. In this regard, approval of the development is not in the public interest.

The application has been referred to the Northern Beaches Local Planning Panel for determination in accordance with the direction issued by the Minister for Planning on 23 February 2018, as the application seeks consent for an industrial development that involves a variation to the building height development standard greater than 10%.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - Zone IN1 General Industrial
 Warringah Development Control Plan - A.5 Objectives
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 3 DP 397714 , 18 Inman Road CROMER NSW 2099 Lot 6 DP 201553 , 18 Inman Road CROMER NSW 2099 Lot 7 DP 201553 , 18 Inman Road CROMER NSW 2099 Lot 27 DP 28882 , 69 Middleton Road CROMER NSW 2099 Lot 9 DP 201553 , 6 Villiers Place CROMER NSW 2099 Lot 10 DP 201553 , 7 Villiers Place CROMER NSW 2099 Lot 8 DP 201553 , 4 Villiers Place CROMER NSW 2099
Detailed Site Description:	<p>The site comprises of seven (7) allotments located between Middleton Road, Inman Road and Villiers Place. The site has a combined surveyed area of 11,626.8m².</p> <p>The site has three street frontages:</p> <ul style="list-style-type: none"> • Middleton Road of approximately 13m in length; • Inman Road of approximately 22m in length; • Villiers Place of approximately 69m in length. <p>The site experiences undulating topography that can be best described through the following RLs:</p> <ul style="list-style-type: none"> • RL 22.34 (Middleton Road entrance) • RL 33.91 (north-western corner of 69 Middleton Road)

- RL 43.16 (eastern-most corner of 69 Middleton Road)
- RL 28.42 (northern Villiers Place entrance)
- RL 27.51 (western Villiers Place entrance)

Existing on the northern portion of the site is an under-construction industrial warehouse development. The remaining parts of the site are mostly cleared with the previous buildings having been demolished. Large retaining structures border the northern perimeter of 69 Middleton Road.

The surrounding development consists of industrial buildings to the south and west, and residential properties to the north and east. There are two public reserves to the west and north of the site, and a public stairway running along the western boundary.

Map:



SITE HISTORY

DA2007/0974

Development application for demolition works and construction of an industrial/warehouse building containing 54 units with ancillary office spaces and car parking on a similar site, comprising of 69 Middleton Road and 6 Villiers Place.

The application was approved by the Warringah Development Assessment Panel (WDAP) on 27 August 2008. The consent has been activated and has not been surrendered. However, the surrender of this consent has been requested at the time of writing this report.

MOD2008/0299

Application to amend conditions of consent of the approved development was approved on 10

December 2008.

DA2017/0256

A development application was lodged with Council on 23 March 2017 for construction of building comprising of storage units on LG and 25 warehouse units on upper floor.

On 9 May 2017, the applicant advised Council that they had commenced Class 1 proceedings of "deemed refusal" with the Land and Environment Court of New South Wales (LEC) on 5 May 2017 (four days after the cessation of the notification period).

Council's Statement of Facts and Contentions (SOFC) was filed on 30 May 2017 which concluded that all issues pertaining to the development application are engineering related and could be resolved via condition or additional information.

Following the filing of the SOFC, a number of requests for additional information were sent to the applicant, with each piece of information provided by the Applicant being unsatisfactory to Council's Development Engineers.

A Section 34 Conference was held on 11 September 2017, which did not resolve the engineering issues. In accordance with the directions made at the Section 34 Conference, Council provided the applicant with a set of draft conditions on 25 September 2017.

Revised Concept for DA2017/0256

On 16 October 2017, by way of email, the applicant provided a letter and a revised concept proposal which added an additional two storeys (warehouse and mezzanine) atop the proposed development. The two additional storeys comprised of an additional 18 warehouse units and associated car parking. This revised scheme had not been the subject of any previous discussion with Council.

Council met with the applicant on 9 November 2017 to discuss the concept plan in greater detail (beyond the conceptual nature of what had been provided). Following the meeting, the applicant provided additional plans to Council on 6 December 2017. The plans were insufficient for a detailed assessment as they did not include adequate drawings (i.e. site plan, sections or elevations).

Given the significant changes that were proposed as a part of the new concept compared to the original development, Council re-notified the application on 16 February 2018. Four (4) additional submissions were received objecting to the proposal.

By way of a Conciliation Conference on 4 May 2018, the application was determined by way of approval by the LEC. A condition of consent was included in the Consent issued by the Court which required Development Consent No. DA2007/0974 to be surrendered.

DA2017/0256 was surrendered on 14 August 2019.

DA2018/1300

This DA was lodged with Council on 3 August 2018 and sought consent for demolition works, excavation, stormwater infrastructure works and the construction of a mixed use building containing storage premises and industrial warehouse units with associated car parking, signage, site amalgamation and stratum subdivision.

On 25 September 2018, the applicant commenced Class 1 proceedings in relation to the Deemed Refusal of the application with the LEC.

Following a preliminary review of the development application, Council wrote to the applicant on 6

November 2018, requesting that the application be withdrawn or amended to resolve concerns pertaining to the proposed "**central warehouse building**" (Upper Ground Floor Level, Units 38 to 43).

Discussions held between the Applicant and Council resolved that the central warehouse building on the upper level of the development was to be deleted in its entirety and replaced with car parking and landscaping.

The application was subsequently approved by the Northern Beaches Local Planning Panel on 19 December 2018.

This is now the operational consent for the subject site.

DA2019/0135 (Current Development Application)

The current application now seeks consent for the "**central warehouse building**" (along with other changes and additions) that was deleted from the proposed development under DA2018/1300.

On 2 April 2019, the applicant filed Class 1 proceedings in relation to the Deemed Refusal of the application with the LEC (the application was 46 days old at the time the appeal was lodged). This LEC process is on-going.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

- The construction of six (6) new industrial warehouse units with mezzanine levels at the upper ground floor level;
- The addition of mezzanine levels in nine (9) of the approved industrial warehouse units at the upper ground floor;
- A change to the building identification sign above the Villiers Street entry to reduce the height of the signage.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
development control plan	
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for an industrial warehouse development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	The proposal does not satisfy the objectives of the Height of Buildings Development Standard or the IN1 General Industrial zone. The approval of such a significant variation to the Height of buildings Development Standard would result in an undesirable precedent and an argument that the development standard had been abandoned. The non-compliant height will directly result in impacts to surrounding residential properties

Section 4.15 Matters for Consideration'	Comments
	<p>and the public domain. The proposal is an over-development of the site. Compliance with the Height of buildings Development Standard is not considered to be either unreasonable or unnecessary in these circumstances.</p> <p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the WLEP 2011 and WDCP will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Steven Keith Ball	102 Parkes Road COLLAROY PLATEAU NSW 2097
Alison Clinch	3 Orlando Road CROMER NSW 2099
Mrs Jennifer Gail Brien	90 Parkes Road COLLAROY PLATEAU NSW 2097
Mrs Michelle Therese Ball	102 Parkes Road COLLAROY PLATEAU NSW 2097
Mr Paolo Salotto	24 Gilmore Avenue COLLAROY PLATEAU NSW 2097
Mrs Helen Marie Ward	13 Villiers Place CROMER NSW 2099
Mr Stephen John Brindle	11 Villiers Place CROMER NSW 2099

The following issues were raised in the submissions:

- **Height**
- **Traffic impacts and safety**
- **Noise and light pollution**
- **Trees**
- **Construction impacts**
- **View loss**

The matters raised within the submissions are addressed as follows:

- **Height**

The submissions raised concerns that the height of the proposal is unreasonable and would result in additional visual impact and bulk when viewed from the surrounding residential properties.

Comment:

It is agreed that the height of the proposal is unreasonable and has not been adequately justified and this has formed a reason for refusal in the recommendation.

- **Traffic impacts and safety**

The submissions raised concerns that the increase in traffic from the additional warehouse units would result in traffic impacts to the local roads, safety impacts for cars and pedestrians and an increased demand for on-street parking.

Comment:

The additional warehouse space will only generate approximately 16 additional vehicle trips per hour during the peak periods and less outside these times. This increase is not considered to be an unreasonable burden on the local roads.

As it must be assumed that drivers will obey traffic laws and parking restrictions, these additional trips are not expected to increase the safety risk to other vehicles or pedestrians.

The parking issue has been discussed in detail under Part C3 Parking Facilities in this report. In summary, the proposal would provide sufficient off-street parking.

This matter does not form a reason for refusal of the application.

- **Noise and light pollution**

The submissions raised concerns that the additional warehouse units will result in unreasonable noise and light pollution.

Comment:

It is agreed that the additional warehouse units will result in an increase in noise and lighting pollution occurring from the upper level of the development.

Council's Environmental Health Officers reviewed the Noise Report, raising issues with how heavy vehicles were dealt with.

The applicant submitted a revised Acoustic Assessment (dated 12 April 2019) and a Site Management Plan (dated 10 April 2019). The Acoustic Assessment addresses heavy vehicles in its conclusion and the Site Management Plan includes the following:

"No deliveries, loading or unloading associated with the warehouse units, or waste collection for the entire premises, is to take place between 7pm and 7am."

Notwithstanding the above hours, heavy vehicles must not access the site after 6pm."

And

"In order to provide security to the development and enforce the operating hours, particularly the use of "heavy" vehicles, CCTV cameras are to be installed throughout the development."

Whilst it is acknowledged that this will not negate all impacts, Council is satisfied that the proposal, if approved, would be able to effectively manage noise emissions and light pollution so that they are not unreasonable.

This matter does not form a reason for refusal of the application.

- **Tree Loss**

The submissions raised concerns that the existing construction has resulted in the loss of trees around the escarpment and that these trees have not been replaced.

Comment:

This is a matter that cannot be dealt with under this current application as the proposed works do not involve the escarpment or come close enough to impact any trees.

The complaints regarding trees have been referred to Council's Compliance Team and are under investigation.

This matter does not form a reason for refusal of the application.

- **Construction impacts**

The submissions raised concerns that the impacts the residents have already been experiencing during the construction of this development (over the last two years) will continue and get worse as the building gets higher.

Comment:

It is acknowledged that there have been numerous complaints made against the on-going construction of the already approved development. Many of these complaints have lead to enforcement action by Council.

If this proposal is approved, appropriate conditions around construction impacts will be imposed and any complaints will be investigated.

This matter, while clearly distressing for the surrounding residents, cannot form a reason for refusal of the application.

- **View loss**

The submissions raised concerns that the proposal would result in the unreasonable loss of views.

Comment:

This matter has been discussed in detail under Part D7 Views, below in this report. In summary, the loss of views, while relatively minor, are a direct result of the non-compliance with the height of buildings development standard. Therefore, view impacts do form a reason for refusal in the recommendation.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application generally proposes the construction of six (6) new warehouse units with mezzanine levels as well as the addition of mezzanine levels within nine (9) warehouse units on the upper ground level of the Building as approved under Consent DA2018/1300. The building can comply with the National Construction Code and therefore Building Certification Team has No objections subject to conditions</p>
Environmental Health (Industrial)	<p><u>General Comments</u></p> <p>This DA seeks consent from Northern Beaches Council to amend the approved development under DA-2018/1300 as follows :</p> <ul style="list-style-type: none"> • Construction of six (6) new industrial warehouse units with mezzanine levels at the upper ground floor level; • Additional of mezzanine levels in nine (9) of the approved industrial warehouse units at the upper ground floor; • Amended building identification sign above the Villiers Street entry to reduce the width (vertically) of the signage. <p>The application has been considered in its own right although it is acknowledge that it is in conjunction with a previous DA which has been approved subject to conditions.</p> <p>The SEE is by City Plan February 2019.</p> <p>Noise and dust from excavation works has been addressed in a construction management plan this plan should/can form part of conditions of approval.</p> <p>Noise implications are potentially significant due to the natural amphitheater and residents above and have been addressed in a comprehensive acoustic assessment by Renzo Tonin and Associates 16 Jan 2019.</p> <p>As the proposal is in the future, the assessment is based on predictions only and an extensive list of recommendations has been provided, however it is noted that one comment within the report on access to the site by heavy vehicles past 6pm leading to failure to comply with noise nuisance criteria, is to be addressed in a management plan (not observed).</p>

Internal Referral Body	Comments
	<p>The acoustic assessment's final recommendations do not include further reference to this issue. A management plan has not been submitted at this time and it is not clear how heavy vehicles (and what definition determines a heavy vehicle) is to be effectively restricted on site; whether this will be signage or some physical supervised barrier, number plate recognition, this needs to be resolved before any approval is given as simple signage with multiple users may not be adequate.</p> <p>Based on similar vehicle noise problems elsewhere in this geographic area, signage may not be sufficient to prevent heavy vehicles from entering or leaving the site and hence exceeding noise limits and complaints to Council left to enforce.</p> <p>Therefore details of the site management plan specifically relating to heavy vehicles (and defining heavy vehicles) needs to be robust and submitted prior to any approval been granted.</p> <p>With regard to other plant in a equipment noise, this can be dealt with using the acoustic assessment as a basis of conditions with a satisfactory outcome. Post construction noise assessment review will be required. Individual Warehouses will require separate DA's and the Renzo Tonin and Associates 16 Jan 2019 acoustic assessment will be the reference report.</p> <p>Recommendation - REFUSAL subject to additional information</p> <p><u>Planners comment:</u></p> <p>The applicant submitted a revised Acoustic Assessment (dated 12 April 2019) and a Site Management Plan (dated 10 April 2019). The Acoustic Assessment addresses heavy vehicles in its conclusion and the Site Management Plan includes the following:</p> <p><i>"No deliveries, loading or unloading associated with the warehouse units, or waste collection for the entire premises, is to take place between 7pm and 7am.</i></p> <p><i>Notwithstanding the above hours, heavy vehicles must not access the site after 6pm."</i></p> <p>And</p> <p><i>"In order to provide security to the development and enforce the operating hours, particularly the use of "heavy" vehicles, CCTV cameras are to be installed throughout the development."</i></p> <p>In this regard, sufficient information has been provided for Council to be satisfied that the proposal, if approved, would be able to effectively manage noise emissions.</p>
NECC (Development	

Internal Referral Body	Comments
Engineering)	<p><u>Note to Planner:</u></p> <p>The proposed development relies upon the final occupation of the existing approved development under DA2018/1300. Please ensure appropriate conditions are applied for the timing of occupation of the current proposed development.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>
Strategic and Place Planning (Urban Design)	<p>The site is located at the base of a hilly slope overlooked by residential properties on the higher part of the slope. DA2018/1300 was granted consent in December 2018 allowing a maximum RL41.20 to one of the building (Warehouse 50 and 51) which is located on the higher part of the hill slope next to development entry point from Villiers Place. The current proposal seeks to put additional built forms on the roof deck of the approved DA to align with RL41.20 despite being located on the lower part of the hill slope.</p> <p>The proposed additional bulk was previously part of DA2018/1300 but was taken away to achieve a more complying built form. The applicant is now seeking to have the additional bulk added to the approved built form.</p> <p>The proposal cannot be supported for the following reasons:</p> <p>1. The objectives of the WLEP 2011 building height development standard are set out below:</p> <ul style="list-style-type: none"> a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development, b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access, c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments, d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities. <p>The proposal exceeds the 11m building height by up to 6.74m. The breached building bulk is visible from Middleton Road and Villiers Place. The proposal of landscaping on top of the breached area does not help in minimising the scale of the development.</p> <p>The biggest building bulk breach is created from the proposed addition of the double-storey warehouses. This exceeded bulk is most visible when viewed from the public staircase on the western boundary as illustrated from the 'before and after' photo montages supplied by the applicant.</p> <p>The additional building bulk has blocked out distant view affecting the scenic quality experience for users of the public stairs. The immediate adjacent houses' view corridors are also partially affected. As such, the objectives of the standard have not been complied with.</p>

Internal Referral Body	Comments
	<p>2. The proposed additional bulk will be visible from both Villiers Place and Middleton Road. The 11m building height plane following the natural hill slope is to ensure development built forms will step down the slope hugging the terrain. This intention has not been achieved. The proposal will also result in built forms which are taller than the adjacent developments.</p> <p>3. The proposal will result in 6 additional double-storey warehouse units and 9 additional mezzanine-storeys all breaching the 11m building height plane which is meant to limit the amount of development using envelope control. These will result in an overdevelopment of the site setting an undesirable precedent.</p>
Traffic Engineer	<p>The proposal is for an additional 1,318m² GFA of warehouse space above the previously approved DA (DA2018/1300). The proposal will also reduce the parking on-site by 20 spaces from 151 to 131 parking spaces. The access driveways will remain unchanged.</p> <p>Reviewing the SOEE and traffic reports, there is an inconsistency in the proposed warehouse units GFA in the two reports. It should be noted the parking assessment has been undertaken taking the SOEE report into consideration.</p> <p>Given the nature of the industrial use in the surrounding area, the proposal additional 16 vehicle trips per peak hour is not considered to have significant adverse impact on the surrounding road network.</p> <p>The self-storage component of the proposed development, which remains unchanged, was approved in the previous DA with no parking provision.</p> <p>Applying the Warringah DCP parking rate, the proposed 11,612m² GFA will require the provision of 158 parking spaces (an additional 7 spaces to the previously approved 151).</p> <p>As the proposed development includes the removal of 20 parking spaces, the proposed shortfall of 27 parking spaces is not supported.</p> <p><u>Planners comment:</u></p> <p><i>The Self Storage Association of Australia (SSAA) commissioned a traffic and parking study of self-storage facilities around Australia to address the lack of specific guidelines used by Council and developers to determine an appropriate number of car parking spaces for self-storage units. The study (<i>Self-Storage Facility Traffic and Parking Study</i> prepared by <i>Aurecon Australia</i> dated 2009) determines that, for the type of development being proposed, there is no actual car parking requirement for vehicles.</i></p> <p>The study determines that an appropriate provision of car parking is 5 spaces for facilities with an area between 3,000m² and 6,000m².</p> <p>The proposed development provides no car parking facilities in the</p>

Internal Referral Body	Comments
	<p>lower ground level self storage unit premises, and is therefore deficient of the comparison by 5 spaces.</p> <p>Despite being numerically non-compliant with the required number of car parking spaces, the application is considered satisfactory and will not result in adverse traffic and parking implications both in the facility itself and on surrounding roads.</p> <p>Given the use within the premise as self-storage, it is anticipated (in the Self-Storage Facility Traffic and Parking Study) that vehicles will park directly in front of their allocated storage unit for loading and uploading purposes, thus negating the functionality and likely usage of dedicated car parking spaces elsewhere on the site. Further, the concept of loading and unloading directly in-front of the allocated unit presents a safer pedestrian environment, rather than manoeuvring many items to and from dedicated car parking spaces to the storage unit.</p> <p>The aisles of the development are 5.8m in width which is sufficient to allow the potential for a parked car to be passed by another car. Further to this, in the event that a car is blocking the driveway (either by size or as a result of bad parking), there are alternate exits (aisles) throughout the development for vehicles to traverse through, and the likely length of trips to the development is not anticipated to be so great that congestion will become an issue internally.</p> <p>As such, the provision of car parking for the subject development is considered satisfactory.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for industrial purposes for a significant period of time with no prior land uses.

The proposed works are located entirely above already approved structures and will not involve any

earthworks or other disturbance of the site.

In addition, this matter was extensively dealt with under DA2018/1300.

Based on the reports submitted for DA2018/1300, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the proposed development.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	17.74m	61.27%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No

Clause	Compliance with Requirements
	(see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone IN1 General Industrial

The underlying objectives of the IN1 General Industrial zone are addressed as follows:

- *To provide a wide range of industrial and warehouse land uses.*

Comment:

The proposal will provide additional industrial and warehouse uses and therefore meets this objective.

- *To encourage employment opportunities.*

Comment:

The proposal will provide additional employment opportunities and therefore meets this objective.

- *To minimise any adverse effect of industry on other land uses.*

Comment:

The proposal will result in additional adverse impacts on the residential properties to the north and east. The surrounding residential properties will be exposed to additional visual impacts, additional noise and additional light spill. These impacts have not been minimised, as evidenced by the excessive height and visual impact of the proposal.

The development does not meet this objective.

- *To support and protect industrial land for industrial uses.*

Comment:

The proposal is for an industrial use on industrial land and therefore meets this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

Comment:

The proposal does not limit other land uses on other sites and therefore meets this objective.

- *To enable a range of compatible community and leisure uses.*

Comment:

The proposal does not limit community and leisure uses on other sites and therefore meets this objective.

- *To maintain the industrial character of the land in landscaped settings.*

Comment:

The development provides very minimal landscaping. However, the proposed works are located entirely within the already approved footprint and will not result in a reduction of deep soil planting. Some vegetation in planter boxes will be lost, however, this is not considered to result in the proposal not meeting this objective.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	17.74m
Percentage variation to requirement:	61.27%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to

justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) ssessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

"There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.

Some additional specific environmental grounds to justify the breach of the standard are summarised as follows:

1. *The varying topography of the site, including a steep slope from the northern and eastern boundaries of the site to the southern and south-western boundaries ranging between RLs 22.34 up to 43.16 (20.82 metres), results in a breach of the height of buildings development standard as it relates to the site. The varying topography of the site is related to both natural processes as well as an altered ground level due to development of the land over time and is significantly lower than Villiers Place and the public stairs which traverse upwards along the western boundary. The maximum breach of the height standard is located in the centre of the site where the topography follows an existing drainage line. The variation towards the southern portion of the site, near Villiers Place, is a result of the land sloping in this direction, and the level change on the site compared to the immediately adjacent streetscape which is 1m-2m higher than the site.*
2. *The site is subject to a building that has been approved with a maximum R.L of 41.2, noting that this part of the building is within the Villiers Place frontage and visible from adjoining properties and the public domain. The proposed works have an R.L of 41.2, however, are setback from the edges of the street frontages by between 8m and 19m (approximately), to minimise their visibility.*
3. *The variation to the standard allows for a consistent built form on the site as opposed to a fragmented one. In this respect, the upper level contains warehouse units that include mezzanine levels. The proposed variation to the standard allows the remaining warehouses on the upper level to include mezzanine levels. The proposed additional warehouse units are located centrally on the site where their visibility is limited, however, is where the standard is varied the most due to the sloping nature of the site and natural drainage line directly below the proposal.*

4. *The site is subject to natural drainage occurring across the site due to its topography. Subsequently, the portion of the proposed development located on 69 Middleton Road and 6 Villiers Place is required to provide a minimum finished floor level 300mm above the natural over-land flow path during flooding events as previously approved under DA 2018/1300 and detailed in the approved Overland Flow Analysis that was submitted as part of that application. The portion of the proposed development located on 18 Inman Road and 4 and 7 Villiers Place is required to provide a minimum floor level of 300mm above (freeboard), consistent with the remainder of the building on 69 Middleton and 6 Villiers Place. The requirement for these finished floor levels results in a higher building and contributes to the extent of the variation.*
5. *The variation to the standard will provide additional ongoing employment opportunities on the site and contributing to the Cromer Industrial Area, which directly satisfies the objectives of the zone. Further, the variation allows for the additional employment/industrial floorspace to be included on a site that has been considered suitable for this particular use and is compatible with the zone and surrounding properties.*
6. *A large portion of the proposed building is recessed from the street and screened. Any potential visual impact is offset by this setback and will not be easily visible. The proposed variation will not give rise to any adverse visual impact, overshadowing, sunlight access or loss of privacy to any residential properties in the north.*
7. *The proposed additional employment floor space will have a marginal increase to traffic to the site, and is considered to have no unacceptable traffic implications in terms of road and network capacity as concluded in the Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd which is provided at Annexure 11 of the Statement of Environmental Effects for this DA."*

Each of the Applicants reasons is addressed as follows:

1. Topography of the site

The topography of the site is not so varied, steep or undulating so as to make compliance with the development standard impossible or unreasonable.

The topography of the site has already been dealt with in the previous applications and the approvals issued and is not a sufficient reason to justify such a significant variation to the development standard under the current application.

2. Existing approval

The already approved development on the site does include a portion at RL 41.2 (the maximum height of the proposal), however, this element is almost entirely underneath the 11.0m height limit as the land is near its highest point adjacent to Villiers Place. The existing approved development is a built form and height that can be reasonably expected on the site. The proposed new elements are almost entirely above the 11.0m height limit and will have additional impacts on the private and public domain.

Using a mostly compliant element of the building to justify the proposed development is not a sufficient reason for such a significant variation to the development standard.

3. Consistent built form

The existing development positioned the highest warehouses (in terms of height, not RLs) around the rear of the site where the land starts to step up and where they can be "nestled" below the escarpment. The proposal seeks new warehouses and mezzanine elements in the centre of the site and nearer the street frontages, which is not consistent with the built form on the northern side of Middleton Road. This design will add additional bulk where it will be highly visible from the private and public domains.

A site with a significant rise in slope from front to rear, requires a development that steps down with that topography and responds to its context and setting, not a development that ignores it.

This reason is not sufficient to justify such a significant variation to the development standard.

4. Drainage line

Similar to the topography argument above, the natural drainage line was a factor in the previous approvals on the site and has no relevance to the current application. The requirement for the lower floor level to be 300mm above the over-land flow path, may be sufficient to justify a minor (i.e. 300mm) height variation, but not a 6.74m non-compliance.

This reason is not sufficient to justify such a significant variation to the development standard.

5. Employment Opportunities

The argument that a variation to the height of buildings development standard should be granted so as to create additional employment opportunities is not a relevant consideration under Clause 4.6 and is not supported. Each site within the industrial area contributes to jobs in a manner consistent with the adopted planning controls and consistent with the public interest.

Zoning and heights are set on a strategic basis in order to not overload the infrastructure of the area and maintain character and amenity. If such an argument was suitable for this site, it should be suitable for every similar site, which would have the effect of undermining the planning controls, would set an uncontrollable and undesirable precedent and render the development standard meaningless and redundant.

This is not a sufficient reason to justify such a significant variation to the development standard.

6. Impact

It is not concurred with that *"the proposed variation will not give rise to any adverse visual impact, overshadowing, sunlight access or loss of privacy to any residential properties in the north"*.

The proposed development will have an additional visual impact from the residential properties to the north and east of the site. The development will also have additional visual impacts from the public domain.

This is not a sufficient reason to justify such a significant variation to the development standard.

7. Traffic impacts

It is not concurred with that the development *"will have no unacceptable traffic implications in terms of road and network capacity"*.

The additional traffic movements in and around the site will result in additional amenity impacts

to the surrounding residential properties. These impacts would include noise and light spill. The additional traffic will increase the demand for on-street parking and movements on the road network as a direct result of the additional floor space proposed above the height limit.

This is not a sufficient reason to justify such a significant variation to the development standard.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) and the application should be refused on these grounds.

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the IN1 General Industrial zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The vast majority of industrial buildings (and other development) in the vicinity are below or well below the 11.0m height limit.

The largest nearby building is on No. 14 Inman Road, bordering the south of the subject site. This development was approved (via DA2013/0708 and DA2014/0577) with a maximum height of 12.0m. The majority of this building is below the 11.0m height limit. No. 14 Inman Road demonstrates a more suitable built form that is considered compatible with the height and scale of surrounding and nearby development.

The proposed development will far exceed the maximum height of all surrounding industrial buildings, to the point where the development cannot be considered to be compatible with the

height and scale of surrounding and nearby development.

The development does not meet this objective.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The proposed development will result in adverse impacts on other land uses, directly as a result of the non-compliance with the height of buildings development standard. The surrounding residential properties will be exposed to additional visual impacts, additional noise and additional light spill. These impacts have not been minimised as evidenced by the excessive height of the proposal.

The development does not meet this objective.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

While the existing development of this site has impacted on the bush environment on the escarpment surrounding the northern and eastern sides of the site, the proposed development will not unreasonably impact on the scenic quality of Warringah's coastal and bush environments.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The additional bulk will be most visible when viewed from the public staircase on the western boundary of the site. The proposal will block out distant views, affecting the users of the public stairs.

The development will be highly visible from both Villiers Place and Middleton Road, resulting in visual impacts as a direct result of the non-compliant proposal, from these public areas.

The development does not meet this objective.

Zone objectives

The underlying objectives of the IN1 General Industrial zone are:

- *To provide a wide range of industrial and warehouse land uses.*

Comment:

The proposal will provide additional industrial and warehouse uses and therefore meets this objective.

- *To encourage employment opportunities.*

Comment:

The proposal will provide additional employment opportunities and therefore meets this objective.

- *To minimise any adverse effect of industry on other land uses.*

Comment:

The proposal will result in additional adverse impacts on the residential properties to the north and east. The surrounding residential properties will be exposed to additional visual impacts, additional noise and additional light spill. These impacts have not been minimised as evidenced by the excessive height of the proposal.

The development does not meet this objective.

- *To support and protect industrial land for industrial uses.*

Comment:

The proposal is for an industrial use on industrial land and therefore meets this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

Comment:

The proposal does not limit other land uses on other sites and therefore meets this objective.

- *To enable a range of compatible community and leisure uses.*

Comment:

The proposal does not limit community and leisure uses on other sites and therefore meets this objective.

- *To maintain the industrial character of the land in landscaped settings.*

Comment:

The existing approved development provides very minimal landscaping. However, the proposed works are located entirely within the already approved footprint and will not result in a reduction of deep soil planting. Some vegetation in planter boxes will be lost, however, this is not considered to result in the proposal not meeting this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the IN1 General Industrial zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent

to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the standard and the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard cannot be assumed.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B5 Side Boundary Setbacks	Merit assessment	South - Nil West - Minimum of 20.44m East - Minimum of 31.05m	Yes (on merit)
B7 Front Boundary Setbacks	4.5m	Middleton Road - Minimum of 34.21m Inman Road - Minimum of 41.15m Villiers Place - Minimum of 8.64m	Yes
B9 Rear Boundary Setbacks	Merit assessment	North - Minimum of 28.06m	Yes (on merit)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes

Detailed Assessment

A.5 Objectives

The overriding objective of the WDCP is to create and maintain a high level of environmental quality throughout the area covered by the DCP. Development should result in an increased level of local amenity and environmental sustainability.

The other objectives of this plan are:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood.*
- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.*
- *To inspire design innovation for residential, commercial and industrial development.*
- *To provide a high level of access to and within development.*
- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained.*
- *To achieve environmentally, economically and socially sustainable development for the community of Warringah.*

Comment:

The proposed development does not respond to the characteristics and topography of the site as it does not step down with the slope of the land.

The development involves a substantial breach of the height limit and cannot be considered to be a good neighbour or contribute to the street.

While the site is not in an environmentally sensitive area, the proposal is considered to be an overdevelopment of the site and will be visually intrusive.

Overall, the proposal does not meet the objectives of the WDCP.

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Warehouse or Distribution Centre	1.3 spaces per 100m ² * *including up to 20% of floor area as office premises space component. Office premises component above 20% determined at office premises rate.	Warehouse (6,823m ² excluding 1,940m ² internal loading area): 88 spaces Mezzanine office (2,322m ² @ warehouse rate – i.e. 20% of total): 30 spaces	Warehouse: 88 spaces Mezzanine office: 30 spaces	0
Office Premises	1 space per 40m ² GFA	Mezzanine office (527m ² @ office rate – i.e. area in excess of 20% of total): 13 spaces	Mezzanine office: 13 spaces	0
Self Storage Facility	Not included	5 spaces for facilities with an area between 3,000m ² and 6,000m ²	0	-5
Total		136	131	-5

The *Self Storage Association of Australia* (SSAA) commissioned a traffic and parking study of self-storage facilities around Australia to address the lack of specific guidelines used by Council and developers to determine an appropriate number of car parking spaces for self-storage units. The study (*Self-Storage Facility Traffic and Parking Study* prepared by *Aurecon Australia* dated 2009) determines that, for the type of development being proposed, there is no actual car parking requirement for vehicles.

The study determines that an appropriate provision of car parking is 5 spaces for facilities with an area between 3,000m² and 6,000m².

The proposed development provides no car parking facilities in the lower ground level self storage unit premises, and is therefore deficient of the comparison by 5 spaces.

Despite being numerically non-compliant with the required number of car parking spaces, the application is considered satisfactory and will not result in adverse traffic and parking implications both in the facility itself and on surrounding roads.

Given the use within the premise as self-storage, it is anticipated (in the Self-Storage Facility Traffic and Parking Study) that vehicles will park directly in front of their allocated storage unit for loading and uploading purposes, thus negating the functionality and likely usage of dedicated car parking spaces elsewhere on the site. Further, the concept of loading and unloading directly in-front of the allocated unit presents a safer pedestrian environment, rather than manoeuvring many items to and from dedicated car parking spaces to the storage unit.

The aisles of the development are 5.8m in width which is sufficient to allow the potential for a parked car to be passed by another car. Further to this, in the event that a car is blocking the driveway (either by size or as a result of bad parking), there are alternate exits (aisles) throughout the development for vehicles to traverse through, and the likely length of trips to the development is not anticipated to be so great that congestion will become an issue internally.

As such, the provision of car parking for the subject development is considered satisfactory.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The parking areas have already been approved under DA2018/1300. The proposed parking changes will have a minimal visual impact on the street frontage.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The parking areas have already been approved under DA2018/1300. The proposed parking changes will not dominate the street frontage.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D3 Noise

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal is not considered to be an innovative design solution that will improve the urban environment. The request for additional height and bulk that will result in additional noise impacts to surrounding residential properties.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

Council's Environmental Health Officers have commented:

"As the proposal is in the future, the assessment is based on predictions only and an extensive list of recommendations has been provided, however it is noted that one comment within the report on access to the site by heavy vehicles past 6pm leading to failure to comply with noise nuisance criteria, is to be addressed in a management plan (not observed).

The acoustic assessment's final recommendations do not include further reference to this issue. A management plan has not been submitted at this time and it is not clear how heavy vehicles (and what definition determines a heavy vehicle) is to be effectively restricted on site; whether this will be signage or some physical supervised barrier, number plate recognition, this needs to be resolved before any approval is given as simple signage with multiple users may not be adequate.

Based on similar vehicle noise problems elsewhere in this geographic area, signage may not be sufficient to prevent heavy vehicles from entering or leaving the site and hence exceeding noise limits and complaints to Council left to enforce.

Therefore details of the site management plan specifically relating to heavy vehicles (and defining heavy vehicles) needs to be robust and submitted prior to any approval been granted."
The applicant submitted a revised Acoustic Assessment (dated 12 April 2019) and a Site Management Plan (dated 10 April 2019). The Acoustic Assessment addresses heavy vehicles in its conclusion and the Site Management Plan includes the following:

"No deliveries, loading or unloading associated with the warehouse units, or waste collection for the entire premises, is to take place between 7pm and 7am.

Notwithstanding the above hours, heavy vehicles must not access the site after 6pm."

And

"In order to provide security to the development and enforce the operating hours, particularly the use of "heavy" vehicles, CCTV cameras are to be installed throughout the development."

In this regard, sufficient information has been provided for Council to be satisfied that the proposal, if approved, would be able to effectively manage noise emissions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

Merit consideration

Concerns have been raised by some surrounding residents that the proposal would result in the unreasonable loss of views.

The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The affected properties surround the northern and eastern boundaries of the subject site and sit at a higher RL (approximately 20m to 30m higher). There are 11 residential properties that adjoin the site or the public pathway that runs down the western boundary of the site.



Given this height difference, the views to be affected consist of industrial buildings, some vegetation and Middleton Road, to the south, south west and west (depending on which property the viewer is standing), as show in the below photos.

Looking south west:



Looking west:



Views will also be affected from the public pathway and stairs that run along the western boundary of the site. These views include a small portion of district views to the south east.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing

or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

The views are obtained from the rear yards and any rear facing balconies and windows of the 11 properties, and from the public pathway.

The views are mostly from standing positions, however, some sitting views are obtained from most of the adjoining properties. The views from the residential properties are over their rear boundaries.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

Given the extensive district views obtained from the 11 properties and the low value views that will be affected, the impact to the residential properties is considered to be minor.

Given the minimal amount of district and overall views that will be affected from the pathway, the impact to the pathway and stairs is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The views that will be lost from the residential properties consist of industrial buildings, some vegetation and Middleton Road. These views are not considered to be desirable. No district views will be affected due to the elevation difference between the subject site and the residential properties to the rear.

The views that will be lost from the public pathway consist of some vegetation and a small portion of district views. These views make up a small portion of the overall views obtained from the pathway.

Despite the points above, the loss of views from both the residential properties and the pathway,

while minor, is a direct result of the height of the structure and the non compliance with the standard.

In this regard, the development cannot be considered to be reasonable, especially considering the level of the height breach.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The development, given the substantial breach of the height limit is not considered to be an innovative design solutions that will improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

No canopy trees will be affected by the proposal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D9 Building Bulk

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal is not considered to be an innovative design solution that will improve the urban environment. It is a request for additional height and bulk, above what the controls envisage for the site, that will result in visual impacts to surrounding residential properties.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposal will add additional bulk, almost entirely above the prescribed height limit.

The additional bulk will be visible when viewed from the surrounding residential properties and the public staircase on the western boundary of the site. The proposal will block out distant views from the stairs, affecting the users of the public stairs.

The development will be highly visible from both Villiers Place and Middleton Road, resulting in visual impacts, as a direct result of the non-compliant proposal, from these public areas.

The development does not meet this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

This application seeks consent for the construction of additional warehouse units and a increase in the height of existing approved warehouse component of the approved Industrial Warehouse Development.

This application is effectively a re-submission of a similar proposal that was previously found to be unsatisfactory in relation to the main development application DA2018/1300 that was approved by the Northern Beaches Local Planning Panel on 19 December 2018.

The proposed development exceeds the 11.0m height standard by up to 6.74m, having a maximum height of 17.74m, which represents a variation of 61.27%. The applicant's written request to vary this standard has not satisfactorily addressed the mandatory matters under Clause 4.6 of WLEP 2011 and

so the consent authority cannot be satisfied that the relevant matters have been properly addressed. Therefore, the variation to the development standard is not acceptable and not worthy of support. This has formed a reason for refusal of the application.

The proposed development represents an over-development of the site. In this regard, the proposal substantially exceeds the height of buildings control, it is not compatible with other buildings on neighbouring industrial sites and more broadly within the industrial zone, it will result in negative impacts on surrounding residential properties and its approval would set an undesirable precedent for taller buildings which are out of character.

The public exhibition period generated seven (7) submissions, raising concerns around height, traffic impacts and safety, noise and light pollution, trees, construction impacts, and view loss. These matters have been addressed within the report and many are concurred with and have been included as reasons for refusal of the application.

As such, the proposal has been found to be inconsistent with the provisions of the WLEP 2011 in relation to height and the unsupported Clause 4.6 Variation and inconsistent with the provisions and the WDCP 2011 in relation to Building Bulk and Views.

On balance, the proposal is unsatisfactory in relation to its height non-compliance, the negative impacts on neighbouring residential properties, the fact that it is out of character with industrial development generally in the zone and is contrary to maintaining and protecting the public interest.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2019/0135 for the Construction of additional warehouse units to an approved Industrial Warehouse Development (DA2018/1300) on land at Lot 3 DP 397714, 18 Inman Road, CROMER, Lot 6 DP 201553, 18 Inman Road, CROMER, Lot 7 DP 201553, 18 Inman Road, CROMER, Lot 27 DP 28882, 69 Middleton Road, CROMER, Lot 9 DP 201553, 6 Villiers Place, CROMER, Lot 10 DP 201553, 7 Villiers Place, CROMER, Lot 8 DP 201553, 4 Villiers Place, CROMER, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone IN1 General Industrial of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Objectives of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.